

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Eastern Savings Bank, FSB,

Plaintiff,

-against-

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

11-CV-2501 (KAM)

Francis Rabito,  
New York City Parking  
Violations Bureau,  
Connor Doe, Sara Chester,  
Thomas Martin and Brian Robin,

Defendants.

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**MATSUMOTO, United States District Judge:**

On June 3, 2011, plaintiff Eastern Savings Bank, FSB ("plaintiff") filed the instant action against Francis Rabito, the New York City Parking Violations Bureau, Connor Doe, Sara Chester, Thomas Martin, and Brian Robin ("defendants").<sup>1</sup> (See generally ECF No. 1, Complaint ("Compl.") dated 5/19/11.) Plaintiff brings the action to foreclose on a mortgage on residential property located at 394 Graham Avenue, in Kings County in the State of New York, pursuant to N.Y. Real Property Actions and Proceedings Law Section 1301, *et seq.* *Id.* On July 26, 2006, defendant Rabito executed a note in the principal amount of \$400,000 (the "Note") and a mortgage (the "Mortgage")

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 55(a), the clerk of the court entered the default of all named defendants except for Rabito.

in favor of plaintiff in the principal amount of \$400,000. *Id.* Both the Note and the Mortgage were duly recorded in the Office of the City Register of the City of New York on August 29, 2006. *Id.* Defendant Rabito failed to make the monthly mortgage payment due on December 1, 2009, and has not made any payments since. *Id.*

By a Memorandum and Order issued August 16, 2012, this court granted plaintiff's motion for summary judgment, finding that plaintiff had established that Rabito defaulted on his obligation to make payments on the Note and Mortgage, and ordered the foreclosure and sale of the property. (ECF No. 26, Memorandum and Order Granting Motion for Summary Judgment dated 8/16/11.) However, this court also found that plaintiff provided insufficient information to support the amount of damages requested, and ordered plaintiff to submit additional affidavits, documents, and calculations to demonstrate the accuracy of plaintiff's proposed damages. (*Id.* at 17-18.) In accordance with the court's order, plaintiff submitted additional documentation and filed a motion for entry of judgment pursuant to Federal Rule of Civil Procedure 55(b) on August 31, 2012. (ECF No. 27, Proposed Motion for Entry of Judgment dated 8/31/12.) No opposition has been filed. By order dated April 1, 2013, this court referred plaintiff's

Motion for Entry of Judgment to Magistrate Judge Viktor V. Pohorelsky for a Report and Recommendation. (See Order Referring Mot. dated 4/1/13.) On September 5, 2013, Judge Pohorelsky issued a Report and Recommendation finding that plaintiff's submissions on damages and attorney's fees did not adequately allow the court to make an independent determination of the proper amount of damages and attorney's fees to be awarded. (See ECF No. 29, Report and Recommendation ("R&R") at 3-6.) Accordingly, Judge Pohorelsky recommended denying plaintiff's Motion for Entry of Judgment with leave to renew the motion one final time, supported by a more detailed explanation and documentation to substantiate the amount of damages and fees that plaintiff seeks. (See R&R at 6, 9.) The Report and Recommendation also informed the parties that any objections to the report must be filed within fourteen (14) days of receipt of the report. (See R&R at 9 (citing 28 U.S.C. § 636(b)(1))). Therefore, the deadline for parties to file objections to the Report and Recommendation was September 23, 2013. To date, no objections have been filed. (See generally Docket No. 11-CV-2501.)

A district court reviews those portions of a Report and Recommendation to which a party has timely objected under a *de novo* standard of review and "may accept, reject, or modify,

in whole or in part, the findings or recommendations . . ." 28 U.S.C. § 636(b)(1)(C). However, where no objections to the Report and Recommendation have been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the record and Judge Pohorelsky's well-reasoned Report and Recommendation, the court finds no clear error and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court. Accordingly, plaintiff's motion for entry of judgment is denied without prejudice with one final opportunity to renew the motion supported by adequate explanations and documentation to substantiate the principal, interest, charges and attorney's fees sought.

**SO ORDERED.**

Dated: September 26, 2013  
Brooklyn, New York

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/s/  
Kiyo A. Matsumoto  
United States District Judge